



## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1256]

### Certain Portable Battery Jump Starters and Components Thereof

#### **Notice of Commission Determination Not to Review a Final Initial Determination of Violation of Section 337 with Respect to Two Trademarks, and to Review and, on Review, Affirm a Finding of Violation with Respect to a Patent; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination (“Final ID”) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930, with respect to U.S. Trademark Registration Nos. 4,811,656 (“the ’656 mark”) and 4,811,749 (“the ’749 mark”) by defaulting respondent Zhejiang Quingyou Electronic Commerce Co., Ltd. (“Zhejiang Quingyou”) and with respect to the ’749 mark by defaulting respondent Shenzhen Mediatek Tong Technology Co., Ltd. (“Mediatek”). The Commission has further determined to review in part and, on review, affirm a finding of no violation with respect to U.S. Patent No. 10,604,024 (“the ’024 patent”) based on the complainant’s failure to satisfy the technical prong of the domestic industry requirement. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding based on the schedule set forth below.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email

EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On March 23, 2021, the Commission instituted this investigation based on a complaint filed on behalf of The NOCO Company of Glenwillow, Ohio ("NOCO"). 86 FR 15496-98 (Mar. 23, 2021). The complaint, as supplemented and amended, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable battery jump starters and components thereof by reason of infringement of one or more of claims 1, 4, 11, 14, 18, 19, and 21 of U.S. Patent No. 9,007,015 ("the '015 patent") and claims 1, 4-6, 16, 19, 23, 24, 26, 29, and 30 of the '024 patent, and infringement of the '656 and '749 marks. *Id.* at 15497.

The notice of investigation named the following respondents: (1) Advance Auto Parts, Inc. of Raleigh, North Carolina; (2) Anker Technology (UK) Ltd. of Birmingham, United Kingdom; (3) Antigravity Batteries LLC of Gardena, California; (4) Artek Electronic Co., Ltd. of Shenzhen, China; (5) AutoZone, Inc. of Memphis, Tennessee; (6) Best Buy Co., Inc. of South Richfield, Minnesota; (7) Best Parts, Inc. of Memphis, Tennessee; (8) Clore Automotive, LLC of Lenexa, Kansas; (9) Deltran USA, LLC of DeLand, Florida; (10) Energen, Inc. of City of Industry, California; (11) FlyLink Tech Co., Ltd. of Shenzhen, China; (12) Gooloo Technologies LLC and Shenzhen Gooloo E-Commerce Co., Ltd of Shenzhen, China; (13) Great Neck Saw Manufacturers, Inc. of Mineola, New York; (14) Guangdong Boltpower Energy Co., Ltd of Shenzhen City, China; (15) Halo2Cloud, LLC of Hartford, Connecticut; (16) Horizon Tool, Inc. of Greensboro, North Carolina; (17) K-Tool International of Plymouth, Michigan; (18)

Lowe's Companies, Inc. of Mooresville, North Carolina; (19) Matco Tools Corporation of Stow, Ohio; (20) MonoPrice, Inc. of Brea, California; (21) National Automotive Parts Association, LLC (d/b/a NAPA) of Atlanta, Georgia; (22) Nekteck, Inc. of Anaheim, California; (23) O'Reilly Automotive, Inc. of Springfield, Missouri; (24) Paris Corporation of Westampton, New Jersey; (25) PowerMax Battery (U.S.A.), Inc. of Ontario, California; (26) Prime Global Products, Inc. of Ball Ground, Georgia; (27) QVC, Inc. of West Chester, Pennsylvania; (28) Schumacher Power Technology Ltd. of Yancheng, China; (29) Schumacher Electric Corp. of Mount Prospect, Illinois; (30) Shenzhen Carku Technology Co., Ltd. of Shenzhen, China; (31) Shenzhen Dingjiang Technology Co., Ltd. of Shenzhen, China; (32) Shenzhen Jieruijia Technology Co. Ltd. of Gong Ming, China; (33) Shenzhen Mediatek Tong Technology Co., Ltd. of Shenzhen, China; (34) Shenzhen Take Tools Co., Ltd. of Shenzhen, China; (35) Shenzhen Topdon Technology Co., Ltd. of Shenzhen, China; (36) Shenzhen Valuelink E-Commerce Co., Ltd. of Shenzhen, China; (37) Smartech Products, Inc. of Savage, Maryland; (38) ThiEYE Technologies Co., Ltd. of Longgang, China; (39) Tii Trading Inc. of Baldwin Park, California; (40) Walmart Inc. of Bentonville, Arkansas; (41) Winplus North America, Inc. of Costa Mesa, California; (42) Zagg Co. Rrd Gst of Plainfield, Indiana; (43) Zhejiang Quingyou Electronic Commerce Co., Ltd. of Hangzhou, China; and (44) 70mai Co., Ltd. of Shanghai, China. *Id.* at 15497-98. The Office of Unfair Import Investigations is a party to the investigation. *Id.* at 15498.

The Commission permitted NOCO to amend the amended complaint and notice of investigation to make the following changes: (1) to substitute Lowe's Home Centers, LLC, for Lowe's Companies, Inc.; (2) to substitute O'Reilly Automotive Stores, Inc., O'Reilly Auto Enterprises, LLC, and Ozark Purchasing, LLC, for O'Reilly Automotive, Inc.; (3) to substitute Anker Innovations Ltd. (HK) for Anker Technology (UK) Ltd.; (4) to substitute ZAGG Inc. for Zagg Co. Rrd; (5) to substitute Shenzhen Dingjiang

Technology Co., Ltd. (d/b/a Shenzhen Topdon Technology Co., Ltd. and Topdon Technology Co., Ltd.) for Shenzhen Dingjiang Technology Co., Ltd., and Shenzhen Topdon Technology Co., Ltd.; and (6) to add additional respondents related to Winplus North America, Inc.—ADC Solutions Auto, LLC d/b/a/ Type-S and Winplus NA, LLC. Order No. 13 (Apr. 23, 2021), *unreviewed by Comm’n Notice* (May 18, 2021).

The Commission subsequently terminated the investigation with respect to National Automotive Parts Association, LLC (d/b/a NAPA), Shenzhen Jieruijia Technology Co., Ltd., and Shenzhen Take Tools Co., Ltd. based on a voluntary withdrawal of the complaint. Order No. 9 (Apr. 13, 2021), *unreviewed by Comm’n Notice* (May 12, 2021); Order No. 47 (Dec. 6, 2021), *unreviewed by Comm’n Notice* (Jan. 4, 2022). The Commission also subsequently terminated the investigation based on a settlement agreement with respect to the following respondents: Advance Auto Parts, Inc.; Lowe’s Home Centers, LLC; Ozark Purchasing, LLC; O’Reilly Automotive Stores, Inc.; O’Reilly Auto Enterprises, LLC; Shenzhen Dingjiang Technology Co., Ltd. (d/b/a Shenzhen Topdon Technology Co., Ltd. and Topdon Technology Co., Ltd.); Walmart, Inc.; QVC, Inc.; AutoZone, Inc.; and Best Parts, Inc. Order No. 11 (Apr. 19, 2021), *unreviewed by Comm’n Notice* (May 4, 2021); Order No. 14 (Apr. 23, 2021), *unreviewed by Comm’n Notice* (May 18, 2021); Order No. 21 (Jul. 7, 2021), *unreviewed by Comm’n Notice* (Jul. 26, 2021); Order No. 31 (Sept. 20, 2021), *unreviewed by Comm’n Notice* (Oct. 12, 2021); Order No. 35 (Oct. 20, 2021), *unreviewed by Comm’n Notice* (Nov. 22, 2021); Order No. 44 (Nov. 15, 2021), *unreviewed by Comm’n Notice* (Dec. 6, 2021). Finally, the Commission terminated the investigation with respect to Schumacher Electric Corp. and Schumacher Power Technology Ltd. based on a consent order stipulation and entry of a consent order. Order No. 52 (Jan. 12, 2022), *unreviewed by Comm’n Notice* (Feb. 4, 2022).

The Commission found several respondents in default for failing to respond to the

complaint, notice of investigation, and order to show cause why they should not be found in default. The defaulting respondents include the following: Energen, Inc.; FlyLink Tech Co., Ltd.; K-Tool International; MonoPrice, Inc.; Prime Global Products, Inc.; Mediatek; Shenzhen Valuelink E-Commerce Co., Ltd.; ThiEYE Technologies Co., Ltd; Tii Trading Inc.; Zhejiang Quingyou; and Arteck Electronics Co., Ltd. Order No. 23 (Jul. 13, 2021), *unreviewed by* Comm’n Notice (Jul. 30, 2021); Order No. 45 (Nov. 16, 2021), *unreviewed by* Comm’n Notice (Dec. 10, 2021). The Commission also found Smartech Products, Inc. in default based on its voluntary default. Order No. 28 (Aug. 9, 2021), *unreviewed by* Comm’n Notice (Aug. 20, 2021).

Accordingly, at the time of the evidentiary hearing, the following respondents remained active in the investigation: Antigravity Batteries LLC, Gooloo Technology LLC and Shenzhen Gooloo E-Commerce Co., Ltd., Horizon Tool, Inc., Nekteck, Inc., PowerMax Battery (U.S.A.), Inc., Shenzhen Carku Technology Co., Ltd., 70mai Co., Ltd., Matco Tools Corporation, Paris Corporation, and Great Neck Saw Manufacturers, Inc. (collectively, the “Carku respondents”); Guangdong Boltpower Energy Co., Ltd. and Best Buy Co., Inc. (collectively, the “Boltpower respondents”); and Winplus North America, Inc., Winplus NA, LLC, and ADC Solutions Auto, LLC d/b/a Type S (collectively, the “Winplus respondents”).

The Commission also subsequently terminated the investigation with respect to claims 4, 14, 18, and 21 of the ’015 patent and claims 4, 5, 6, 19, 23, and 26 of the ’024 patent based on NOCO’s partial withdrawal of the complaint. Order No. 27 (Aug. 6, 2021), *unreviewed by* Comm’n Notice (Aug. 18, 2021). The Commission later terminated the investigation with respect to the ’015 patent in its entirety. Order No. 46 (Dec. 6, 2021), *unreviewed by* Comm’n Notice (Jan. 4, 2022).

Accordingly, at the time of the evidentiary hearing, the ’656 mark, the ’749 mark, and claims 1, 16, 24, 29, and 30 of the ’024 patent remained asserted in the investigation.

Specifically, NOCO asserted the following: claims 1, 16, 24, 29, and 30 of the '024 patent against the Carku respondents; claims 1, 16, 24, 29, and 30 against the Boltpower respondents; claims 1, 16, 29, and 30 against the Winplus respondents; and claims 1, 29, and 30 against ten of the twelve defaulting respondents. Final ID at 8-9. NOCO also accused defaulting respondent Mediatek of infringing the '749 mark and defaulting respondent Zhejiang Quingyou of infringing the '749 mark and the '656 mark. *Id.* at 338. NOCO's post-hearing brief omits infringement allegations against defaulting respondents FlyLink Tech Co., Ltd. and Arteck Electronics Co., Ltd. *See* CIB at 71-72, 183; Final ID at 8-9, 338.

The ALJ issued a *Markman* Order on November 5, 2021. Order No. 41 (Nov. 5, 2021) ("*Markman* Order"). The ALJ held an evidentiary hearing on January 11-14, 2022.

On April 29, 2022, the ALJ issued the Final ID finding a violation with respect to the '749 mark by defaulting respondent Mediatek and with respect to the '656 and '749 marks by defaulting respondent Zhejiang Quingyou, and finding no violation with respect to the '024 patent. Specifically, with respect to the '024 patent, the ID finds that NOCO showed that the products of the Boltpower respondents and the ten defaulting respondents infringe the asserted claims of the '024 patent, but that NOCO failed to show that the products of the Carku respondents and Winplus respondents infringe the asserted claims. The ID further finds that no asserted claim of the '024 patent was shown to be invalid or unenforceable. Additionally, the ID finds that NOCO satisfied the economic prong of the domestic industry requirement but failed to satisfy the technical prong of the domestic industry requirement as to the '024 patent.

The ALJ's recommended determination on remedy and bonding recommended that if the Commission finds a violation of section 337 with respect to the '024 patent, then the Commission should issue a GEO with respect to the '024 patent and CDOs against all respondents shown to maintain commercially significant amounts of domestic

inventory—Winplus, Carku, Antigravity, the Gooloo respondents, Great Neck, Matco Tools, Nekteck, PowerMax, 70Mai, Horizon Tool, Paris Corporation, Boltpower, and BestBuy. The ALJ also recommends that the Commission issue an LEO against Mediatek regarding the '749 mark, and against Zhejiang Quingyou regarding the '749 mark and the '656 mark. The ALJ finally recommends that the Commission set the bond rate at 100 percent of entered value based on the difficulty of setting the bond based on a price differential due to the large number of respondents and the lack of evidence of a reasonably royalty rate.

The Commission did not receive any submissions regarding the ALJ's recommended determination pursuant to the Commission's post RD-notice (87 FR 29177-78 (May 12, 2022)) or Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

On May 13, 2022, NOCO filed a petition with respect to the '024 patent, seeking review of certain of the Final ID's findings on the technical prong of the domestic industry requirement and infringement and seeking contingent review of certain of the Final ID's findings on invalidity. That same day, Boltpower filed a petition seeking review of certain of the ALJ's and ID's findings on claim construction and infringement with respect to the '024 patent. Also on May 13, 2022, the Carku and Winplus respondents filed a joint contingent petition with respect to the '024 patent, seeking review of the Final ID on numerous issues related to infringement, invalidity, the technical prong of the domestic industry requirement, and the economic prong of the domestic industry requirement. No petitions were filed concerning the Final ID's findings with respect to the asserted trademarks. On May 23, 2022, the parties and OUII filed responses to each other's petitions.

Having examined the record of this investigation, including the ALJ's Final ID, the petitions for review, and the responses thereto, the Commission determined not to review the Final ID's finding of a violation of section 337 respect to the '656 mark and

the '749 mark by defaulting respondent Zhejiang Quingyou and with respect to the '749 mark by defaulting respondent Mediatek. The Commission presumes that the allegations in the second amended complaint against Zhejiang Quingyou and Mediatek are true with respect to the '656 and '749 marks based on those respondents' defaults, including the allegations regarding the satisfaction of the economic prong of the domestic industry requirement against those respondents. 19 U.S.C. 1337(g)(1).

The Commission has determined to review in part the Final ID's finding of no violation of section 337 with respect to the '024 patent and, on review to affirm the Final ID's finding of no violation due to NOCO's failure to satisfy the technical prong of the domestic industry requirement. The Commission further has determined to take no position on the Final ID's findings that: (1) the accused Boltpower Schumacher SL1315 satisfies the limitation "the reverse polarity sensor configured . . . to provide an output signal indicating that the positive and negative polarity terminals of the vehicle battery are properly connected to the positive and negative polarity vehicle battery connectors" recited in the asserted claims of the '024 patent; (2) any accused product or domestic industry product satisfies the limitation "a power switch connected between the power supply and the positive and negative polarity vehicle battery terminal connectors" recited in the asserted claims of the '024 patent; (3) the Winplus products satisfy the "turn off" limitation recited in the asserted claims of the '024 patent; (4) claims 1 and 29 of the '024 patent are not invalid for a lack of written description; (5) claims 1, 24, 29, and 30 of the '024 patent are not rendered invalid as obvious by U.S. Patent Application Publication No. US 2013-0154543 ("Richardson") (RX-0049); (6) claim 16 of the '024 patent is not rendered obvious by Richardson in view of Chinese Pat. App. No. TW M417714U1 ("Luo") (RX-0048); (7) claim 16 of the '024 patent is not rendered obvious by Richardson in view of the asserted prior art E-Power 10 device (RPX-0047); (8) U.S. Patent No. 7,345,450 ("Krieger") (RX-0047) does not anticipate claims 1, 29, and 30 of



the '024 patent; does not render obvious claim 16; (9) claim 16 of the '024 patent is not rendered obvious by Krieger in view of Luo or the E-power 10 device; (10) claim 16 of the '024 patent is not rendered obvious by Krieger in view of Richardson; (11) the asserted domestic industry products satisfy the “power switch” limitation recited in the asserted claims of the '024 patent; and (12) NOCO has satisfied the economic prong of the domestic industry requirement. *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984). The Commission has determined not to review the remainder of the Final ID with respect to the '024 patent.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm’n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written

submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial submissions should include views on the recommended determination by the ALJ on remedy and bonding, which issued on April 29, 2022.

The Commission further requests that NOCO submit proposed remedial orders, provide the HTSUS numbers under which the subject articles are imported, and supply a list of known importers of the subject article with its initial written submission. The written submissions, exclusive of any exhibits, must not exceed 10 pages, and must be filed no later than close of business on **July 14, 2022**. Reply submissions must not exceed 10 pages and must be filed no later than the close of business on **July 21, 2021**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions

should refer to the investigation number (Inv. No. 337-TA-1256) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on June 30, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 30, 2022.

**Katherine Hiner,**

*Acting Secretary to the Commission.*

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